

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 696 - SB 898

March 14, 2013

SUMMARY OF BILL: Prohibits as a defense to bribery of a public servant that the person who sought to influence a public official did so on behalf of a public or private organization, corporation, union, agency, or other entity's behalf, for purposes of an organizing campaign or any other lawful purpose.

Creates a new offense under civil rights intimidation, a Class D felony. A person commits civil rights intimidation if he damages, harms, injures or threatens to injure or coerce a business or its employees from exercising their rights under state and federal law in an effort to obtain something of value for a public or private organization.

Creates a new offense under extortion, a Class D felony. A person commits extortion if he restricts a business, union, or the owners or employees of a business from exercising their rights under state and federal law in an effort to obtain something of value for a public or private organization.

Redefines "riot" under Tenn. Code Ann. § 39-17-301 to mean an assemblage of three or more persons, whether or not participating in any otherwise lawful activity such as a union or employee organized event, that, by tumultuous and violent conduct, creates grave danger of substantial damage to property or serious bodily injury to persons or substantially obstructs law enforcement or other governmental function.

Creates two new offenses under RICO, a Class B felony. It is unlawful to utilize a pattern of racketeering activity in an effort to restrict a business, a union, or the owners or employees of a business from exercising their rights under state and federal law in an effort to obtain something of value for a public or private organization. It is an offense for any person to conspire with another for the purpose of disrupting lawful commerce in places of business where such activity constitutes an assault or causes physical injury to any individual located in or around the place of business.

Authorizes a prevailing plaintiff to recover treble damages in a civil action for conspiring for the purpose of disrupting lawful commerce.

Creates a new offense for "mass picketing," a Class C misdemeanor. "Mass picketing" means the assembly of persons in the use of pickets or demonstrations at or near any business, school, or private facility. It is not an offense to mass picket at any governmental building or facility. It is an offense to engage in any form of mass picketing activity in which:

- A picket constitutes an obstacle to the free ingress to and egress from an entrance to any place of employment, either by obstructing the free ingress and egress with the person's body or by placing a vehicle or other physical obstruction for such purpose;
- The mass picketing prevents the pursuit of any lawful work or employment;
- The picketing constitutes violence, threats of violence, intimidation or other disruptive behavior; or
- The mass picketing is of a private residence; provided that such mass picketing shall not be prohibited to the extent that the same is authorized under state or federal constitutional provisions.

Creates a new offense for "targeted picketing of a private residence," a Class C misdemeanor. It is an offense to engage in targeted picketing of a private residence that has or intends the effect of interfering with the resident's right to quiet enjoyment, or where such targeted picketing of a private residence has or intends the effect of violence or intimidation; provided that it is not an offense to engage in targeted picketing of a private residence if such residence is also a place of employment and the targeted picketing in question relates to or is targeted at such employment.

Authorizes persons or businesses injured or threatened with injury to petition a court of competent jurisdiction to enjoin any behavior that constitutes "mass picketing" or "targeted picketing of a private residence."

Creates a new offense for "retail vandalism," punishable as theft under Tenn. Code Ann. § 39-14-105. One commits "retail vandalism" who intentionally or recklessly damages property of another when the property is used by its owner or possessor in the owner's or possessor's profession, business, trade, or occupation, or the person damages or marks the property owner's merchandise.

Creates a new offense for "aggravated retail vandalism," a Class C felony if committed intentionally or knowingly or a Class D felony if committed recklessly. One commits "aggravated retail vandalism" who in the course of committing retail vandalism, pollutes the property owner's merchandise.

Creates a new offense for "organized retail vandalism," a Class E felony. A person commits "organized retail vandalism" if he organizes, coordinates, controls, supervises, finances, managed, aids, or abets any of the activities of an organized retail vandalism enterprise.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – \$87,900/Incarceration*

Assumptions:

- According to the Department of Correction (DOC), the bill would result in one Class C felony conviction and one Class D felony conviction per year for aggravated retail vandalism that would currently be charged as theft, presumably at a Class E felony

grade. The DOC also assumes that the bill would result in one Class E felony conviction each year for organized retail vandalism.

- According to statistics from the DOC, there has been an average of .7 admissions per year for civil rights intimidation over the past 10 years. It is assumed that the bill would result in one admission every 10 years for the new offense under civil rights intimidation.
- It is assumed that the new offense under extortion would not result in any admissions as the offense is already prohibited under the current definition of extortion.
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2013 is \$64.17.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this legislation.
- A recidivism discount of 33.75 percent applies, but due to the low number of admissions added by this legislation, the recidivism discount does not impact the incarceration cost for the proposed legislation.
- As noted above, it is assumed that the conduct prohibited under the proposed “aggravated retail vandalism” is currently being prosecuted as Class E felony vandalism. It is also assumed that the bill would result in one Class C felony conviction and one Class D felony conviction per year for aggravated retail vandalism. The bill would result in one offender serving an additional 1.77 years (2.98 years, average time served for Class C felony – 1.21 years, average time served for Class E felony) and one offender serving an additional 0.59 years (1.80 years, average time served for Class D felony – 1.21 years, average time served for Class E felony).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 1.77 years (646.49 days) and one offender serving an additional 0.59 years (215.5 days) for a total of \$55,314 [$\$64.17 \times (646.49 \text{ days} + 215.5 \text{ days})$].
- Under the bill, organized retail vandalism is a Class E felony. The average time served for a Class E felony is 1.21 years.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving 1.21 years (441.95 days) for a total of \$28,360 ($\$64.17 \times 441.95 \text{ days}$).
- Civil rights intimidation is a Class D felony. The average time served for a Class D felony is 1.80 years.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every 10 years serving 1.80 years (657.45 days) for a total of \$4,219 [$(\$64.17 \times 657.45 \text{ days}) / 10$].
- The total incarceration cost is \$87,893 ($\$55,314 + \$28,360 + \$4,219$).
- Due to the low number of convictions the bill would result in, it is assumed that the courts, district attorneys, and public defenders can accommodate any impact to their caseloads within existing resources.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

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